

AMENDING SECTION 2401 OF TITLE 28, UNITED STATES  
CODE, TO EXTEND THE TIME FOR PRESENTING TORT  
CLAIMS ACCRUING TO PERSONS UNDER LEGAL DISA-  
BILITY

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OCTOBER 5, 1971.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. SMITH of New York, from the Committee on the Judiciary,  
submitted the following

REPORT

[To accompany H.R. 10575]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 10575) to amend section 2401 of title 28, United States Code, to  
extend the time for presenting tort claims accruing to persons under  
legal disability, having considered the same, reports favorably thereon  
without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend section 2401  
of title 28 of the United States Code, so as to provide that when a  
person entitled to assert a tort claim against the United States is under  
legal disability when the claim accrues, that person may present the  
claim within 2 years after the disability ceases.

STATEMENT

The bill H.R. 10575 is identical to the bill H.R. 10124 of the 91st  
Congress as it passed the House on December 15, 1969.

The principal amendment which the bill H.R. 10575 would make to  
section 2401 of title 28 is the addition of a new proviso at the end of  
subsection (b). This new language would modify existing law by  
providing that the 2-year statute of limitations applicable to tort  
actions against the Government will not run against persons under  
legal disability at the time the action accrues, and that individual may  
present the claim within 2 years after the disability ceases.

Subsection (a) of section 2401 has for years provided a similar ex-  
ception for persons "under legal disability." In the opinion of the com-

mittee, this provides a well-established precedent for a parallel provision applicable to tort actions. It is felt that the application and the meaning of the term "under legal disability" has been established in the application of that term of connection with the statute of limitations for actions covered by subsection (a) of the same section. The use of this term in subsection (a) dates from its inclusion in the subsection when title 28 was enacted as a codified title by Public Law 773 of the 80th Congress on June 25, 1948 (ch. 646, 62 Stat. 869, 971).

As included in the revised title subsection (a) of section 2401 was based on earlier enactments which concerned periods of limitations for various actions, and most directly on earlier language in the act of March 3, 1911 (ch. 231, section 24, part 20; 36 Stat. 1093), which did have an enumeration of categories of persons under specific legal disability. The report of this committee which accompanied the bill, H.R. 3214 of the 80th Congress, which was ultimately enacted as Public Law 773, commented on the revised language in a reviser's note. (H. Rept. 308, 80th Cong., first sess., p. A185). That note stated that the words "person under legal disability or beyond the seas at the time the claim accrues" were substituted for "claims of married women, first accrued during marriage, of persons under the age of 21 years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim." The report stated that the revised language would cover all legal disabilities actually barring suit.

The language now recommended by the committee in H.R. 10124, as amended, will have the same effect. Were it not for the previous history of section 2401 it might be assumed that the exception in subsection (a) would also apply to subsection (b). As has been noted the section in its present form is the result of a combination of the limitations relating to the so-called Tucker Act<sup>1</sup> in subsection (a) and the limitations concerning the Tort Claims Act in subsection (b). This situation was discussed in the case of *U.S. v. Glenn*, 231 F. 2d 884; cert. denied 252 U.S. 926 (1956). In that case the plaintiff attempted to argue that the exceptions in subsection (a) should apply to tort claims actions as well. In that action the plaintiff was a child who was dropped to the floor and suffered a head injury at the time he was born in a naval hospital at Seattle, Wash.

The court examined the legislative history and concluded that the subsections are mutually exclusive. The court referred briefly to the arguments by parties to the action as to the reasons both for and against an exception to the running of the statute as to minors, and concluded that a determination on this point was a matter of policy for the Congress. Other cases have also made it clear that subsection 2401(b) permits no waiver or tolling of the statute of limitations in cases of legal disability such as a minority of the claimant at the time the action accrues. *Pittman v. U.S.* 341 F. 2d 737; cert. denied 382 U.S. 941 (1965) and cases cited therein.

An examination of the legislative history of the Federal Tort Claims Act does not clearly disclose the reason for the failure to include an

<sup>1</sup> Act of Mar. 3, 1887, 49th Cong., 2d sess., ch. 359, 24 Stat. 505; act of Mar. 3, 1911, ch. 231, 36 Stat. 1087, 1091.

exception for persons under a legal disability. The law of many of the State jurisdictions does provide for this type of exception to the running of the statute of limitations. Section 1346(b) of title 28 provides jurisdiction for tort actions against the United States based upon the negligent wrongful act or omission of an employee of the Government acting within the scope of his office or employment, “\* \* \* under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” State law therefore governs the determination of whether the act or omission are negligent or wrongful and whether an action accrues against the United States. However, as has been noted, section 2401(b) fixes the time within which the action must be presented against the United States and Federal law governs the interpretation of the section concerning the limitation period. *Patitucci v. U.S.*, 178 F. Supp. 507 (1959), *U.S. v. John Hancock Mut. Ins. Co.*, 364 U.S. 301 (1960). In this connection it is relevant to note that the earlier bills proposing jurisdiction in the Federal courts for tort actions against the United States apparently followed the tort law of several States and provided exceptions for the running of the statute of limitations to persons under legal disability. Tolling provisions appeared in proposals beginning with the bill S. 1912, reported in the House in the 69th Congress, and ended with S. 4377 in the 71st Congress. Provisions of this type were contained in H.R. 9285 of the 70th Congress which passed both Houses of Congress but was the subject of a pocket veto apparently because of other procedural matters contained in the proposal. In the 71st Congress, these exceptions were not contained in the bill.

It is possible that the provisions were eliminated in an effort to simplify the bill and to allay the feelings of those who questioned the advisability of authorizing tort claims suits against the Government. The more than 20 years of experience of the Government in defending against such action establishes the fact that the legislation has been entirely salutary and provides a just and realistic basis for compensation for persons who are injured as a result of the negligent actions of Government personnel. The committee has concluded that the time is overdue for the recognition of the fact that persons suffering from legal disabilities and particularly those who are under age are actually being deprived of their rights because of the presently overstrict limitation provisions now found in subsection (b) of section 2401.

The unfairness of these strictures has been demonstrated to this committee in cases which have resulted in the introduction of private bills for minors whose rights to assert their actions have been lost because of the failure of someone to present the claim within the 2-year period fixed in the subsection. An example of such a bill was H.R. 4141 of the 88th Congress which concerned a small boy who was malled by a grizzly bear in a national park while being led on a nature walk by two park rangers. This bill was enacted into law as Private Law 88-137 of that Congress which made it possible for an action to be filed in behalf of the minor in a Federal court under the tort claims provisions of title 28. Clearly, an amendment to section 2401(b)

would provide a fair opportunity for all persons suffering under legal disability to assert their claims after the disability ceases.

The committee has carefully considered the objections raised by the Department of Justice to this bill and to a companion bill H.R. 4155, proposing a similar amendment to section 2401(b). That report notes that the laws of most of the States toll the statute of limitations for specified legal disabilities in tort litigation involving private persons. However, the Department questions a similar tolling provision as to actions against the United States. As has been noted, the Federal Tort Claims Act expressly provides that the United States is to, in effect, stand in the same position as a private individual for purposes of tort liability. The Department of Justice has urged that a similar approach should not be followed as regards the tolling of the statute of limitations for legal disability and grounds its opposition on the fact that the particular nature of Government operations is such that such a tolling would serve to prejudice the ability of the Government to defend such suits. The committee feels that this objection must be considered in the light of the detriment suffered by the person under legal disability by reason of the strict application of the statute. It has been concluded that the more just determination would require a tolling of the statute for the individual.

The report of the Department raises specific objections concerning some of the enumerations of legal disability which appeared in the bill H.R. 10124 as originally introduced in the 91st Congress. In light of some of those objections, the committee concluded that restricting the provision in the present bill concerning a tolling of the statute to persons under legal disability would accomplish the basic purpose of the bill. A proposal that an exception for persons imprisoned be included in the tolling provision has been objected to by the Department on the ground that such individuals can bring the action under present-day conditions. The committee agrees and notes that the present bill does not include such language.

In recommending a parallel exception in subsection (b) for persons "under legal disability" to that contained in subsection (a) of section 2401, the committee has not recommended an exception for "persons beyond the seas" in subsection (b).

First of all, subsection (k) of section 2680 of title 28 provides that claims arising in a foreign country shall not give rise to a tort claim against the United States under section 1346(b) of title 28 or as provided in chapter 171 of that title governing tort claims procedure. The committee further has concluded that under modern conditions such an exception for tort claims actions would not be necessary or desirable.

In view of the precedent for such a tolling of the statute of limitations in subsection (a) of 2401 and the demonstrated need for such a provision, it is recommended that the bill be considered favorably.

The report of the Department of Justice on the bill in the 91st Congress, H.R. 10124, is as follows:



U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., October 8, 1969.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 10124 and H.R. 4155, two bills which would amend 28 U.S.C. 2401, to extend the time for filing tort actions against the United States by persons under legal disability.

H.R. 10124 retains the present section 2401, but adds a sentence at the end of subsection 2401(b) to extend the time for filing a tort claim with a Federal agency or commencing an action, if at the time the cause of action accrues, the claimant is under 21 years of age or is insane or imprisoned on a criminal charge. If such legal disability exists, the claimant may bring the action or present the claim within 2 years after the disability is removed. It should be noted that the first two sentences of 28 U.S.C. 2401(b) in the bill retain the language of that section as it was prior to the amendment of this section by Public Law 89-506, 80 Stat. 306 (July 18, 1966).

H.R. 4155 adds to the present subsection 2401(b) a new section providing that the action of any person under legal disability, or beyond the seas at the time the claim accrues (whether before or after the enactment of this sentence) may be commenced within 2 years after the disability ceases. This new language does not toll the statute providing for the presentation of a claim to the appropriate Federal agency which is now the prerequisite to filing a tort action against the Government. If this bill is enacted, this omission should be provided for.

H.R. 10124 is identical to H.R. 5713 of the 90th Congress. A representative of the Department of Justice testified in opposition to H.R. 5713 on November 29, 1967, before Subcommittee No. 2 of your committee. The Department adheres to the position taken at that time and remains in opposition to the tolling of the statute of limitation in tort claims against the United States.

Practically all of the States toll the statute of limitation for one or all of these specified legal disabilities in tort litigation involving private persons, but the picture is entirely different in tort litigation against the States themselves. Only 17 States have waived sovereign immunity completely with respect to tort claims. Of these 17, only four provide for tolling the period of statute of limitations for legal disabilities.

There are substantial reasons for not so tolling the statute of limitations for tort claims against the United States. No practical or legal need has been demonstrated under existing law for such an exception. Since *Muniz v. United States*, 374 U.S. 150 (1963), Federal prisoners have been entitled to bring court suits against the Government and they have done so in large numbers. Infants and other incompetent persons are entitled to sue the Government under the

Tort Act when represented by a guardian ad litem, as provided for in rule 17(c) of the Federal Rules of Civil Procedure. Large numbers of such claims have been asserted on behalf of minors. We have no evidence that persons under these disabilities have not been adequately represented or have not had their rights protected adequately under the existing law. Accordingly, it is our view that this proposed effort at protection is unnecessary.

Moreover, there are strong reasons for opposing this type of legislation. It is well established that tort litigation, far more than other types of litigation, is dependent upon the existence and memories of living witnesses rather than paper records. It would raise very special problems for the Government to extend the time for asserting tort claims against the Government for indefinite and in many cases very long periods of time. There is a constant turnover of Government personnel so that the necessary witnesses would frequently not be available. There are statutory requirements with respect to the destruction of Government records which could well mean no records at all at the time the claim is asserted. There is not the personal knowledge in the Government of all the situations in which claims might be asserted such as there is with private persons who have been involved in accidents. In short, this legislation could impose, and undoubtedly would, heavy and unfortunate burdens in the defense of tort litigation involving the Government. No special circumstances have been indicated which suggest a need for tolling the statute, and there are many considerations which clearly indicate that it would be most undesirable to do so.

The Department of Justice is opposed to the enactment of this legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
*Deputy Attorney General.*

#### CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

#### TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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#### § 2401. Time for commencing action against United States

(a) Every civil action, *other than a tort action*, commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time of the claim

accrues may be commenced within three years after the disability ceases.

(b) *Except as hereinafter provided*, a tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented: *Provided, however, that if a person entitled to assert a tort claim under this title is under legal disability at the time the claim accrues, he or she may present the claim within two years after the disability ceases.*

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